IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

CRL.A.No. 485 of 1999()

AGAINST THE ORDER DT.29.10.98 IN ST.4201/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR .

.....

APPELLANT: PETITIONER

AJAYAN P.S., S/O. SANKARAN,
PALLICHADATH HOUSE, KATTUNGACHIRA,
IRINJALAKUDA, THRISSUR DISTRICT 680 121.

BY ADV. SRI.P.K.ABOOBACKER(EDATHALA)

RESPONDENTS:
----

1. **NARAYAN K. HEGDE, AGED 40 YEARS,**
   S/O.KARIANNA HEGDE, SRI.MARUTHI TYRE & TREADS,
   C-10, INDUSTRIAL ESTATE,
   TIPTUR, THUNKUR DISTRICT, KARNATAKA.

2. **STATE OF KERALA,. REP.BY PUBLIC**
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR
BY ADV. SRI. SHRIHARI)
SMT. P. VANI) - R1

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.485 OF 1999

Dated 28th February, 2007

JUDGMENT

This appeal is filed against the order of acquittal passed under section 256(1) of the Code of Criminal Procedure for absence of the complainant. The appeal was filed with a petition for permission under section 378(4) of Cr.P.C. That petition was filed along with a delay condonation petition. At that time, the first respondent was represented by a counsel as notice was served in the delay condonation petition. However, after condoning the delay leave was granted. But, when notice was issued in the appeal, the same was evaded by the first respondent.

2. The appellant/complainant filed a complaint under section 138 of the Negotiable Instruments Act. There were several postings in the case even before service of notice to the accused. When the case was posted for return of summons, in on one of the posting dates, the complainant was absent and the accused was acquitted. I am of the view that even though the trial court has got power to acquit the accused for the absence of the complainant, it should not be done mechanically. In this case, the case was posted for

return of summons on the accused and the presence of the complainant was not mandatory as accused was absent. In the above circumstances, acquittal of the accused for the absence of the complainant was incorrect and therefore, the order of acquittal is set aside. Since notice was not served on the accused, fresh steps should be taken by the complainant. The appellant/complainant shall appear before the court below on 26.3.2007.

The appeal is allowed by way of remand.

J.B.KOSHY
Judge

tks